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SENSITIVE
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DEPARTMENT FOR EB/IPC, EAP/MLS AND EAP/EP
DEPARTMENT PASS TO USTR AND USPTO

E.O. 12958: N/A
TAGS: [ETRD](#) [ECON](#) [KIPR](#) [CB](#)
SUBJECT: CAMBODIA: COMMENTS FOR SPECIAL 301 REVIEW

11. (SBU) Summary. Post recommends that Cambodia not be placed on the Special 301 Watch List for the time being. Cambodia is not fully TRIPS compliant and its IPR enforcement is weak. Although pirated optical discs and counterfeit products are pervasive in the market place, virtually all of the products are produced elsewhere. The local market is small, with most sales to tourists and foreigners residing in Cambodia, and damage to the industry is minimal. Despite its shortcomings, the Cambodian government recognizes the importance of IPR protection and has sought assistance in capacity-building, both bilaterally and through ASEAN initiatives. After decades of turmoil beginning in the early 1970's and ending only in 1998 with the surrender of the last Khmer Rouge units, Cambodia has come late to awareness of the IPR issue. Given its chaotic past and expressed willingness to cooperate with the U.S., most recently during February 12 TIFA discussions, post believes Cambodia should be given more time. In the meantime, we intend to work closely with Cambodia to raise public awareness, engage in capacity-building and provide technical assistance. End Summary.

IPR Environment

12. (SBU) Although not yet a signatory to the Berne Convention, Cambodia has most of the legislation in place to protect Intellectual Property Rights (IPR), including laws on trademarks, copyrights and patents. However, Cambodia's IPR protection regime is not fully in compliance with its WTO TRIPS commitments. It has not fully implemented its commitments under the BTA in the area of IPR protection and enforcement. The Cambodian government (RGC) has taken few significant measures to enforce its IPR obligations. One of the few such actions was a raid in October 2005 on a cigarette factory that was manufacturing counterfeit Marlboro cigarettes. The factory manager was later convicted in absentia. In November 2005, the WTO granted a deadline extension until 2013 for Cambodia and other least developed countries to enforce copyright laws and begin accepting patents.

13. (SBU) Infringements of IPR are pervasive, ranging from the sale of pirated computer software, music compact discs, and DVDs to the sale of counterfeit products, including watches and drugs. The expense and scarcity of books has led to the sale of photocopied books, including college text books and comic books.

14. (SBU) Post is not aware of the existence of plants to manufacture DVDs in Cambodia, although small shops duplicate copyrighted material on rewritable CDs. The great majority of discs on the market are counterfeited in Malaysia or

China. Given the small size of the middle class, there is very little local demand. Sales are mostly to tourists and foreigners living in Cambodia. Damage to the industry, therefore, is probably very small. There have been occasional police raids on counterfeit copies of domestic CDs or DVDs, always at the request of the copyright holder. In addition to counterfeit cigarettes noted above, the Pfizer Pharmaceutical Company has detected counterfeit versions of its profitable Viagra drug on the local market.

15. (SBU) On several occasions, the Ministry of Commerce has observed the use of American trademarks, such as Holiday Inn, Pizza Hut and McDonalds. When these infringements have become known, the Ministry has obtained agreement from the violators to change the names of their establishments. However, Anheuser-Busch, Inc. lost a lengthy legal battle in 2005 with the Czech firm Budejovicky Budvar to gain exclusive use of the Budweiser mark in Cambodia.

IPR and TIFA Talks

16. (SBU) The Cambodian government recognizes the importance of IPR protection, both to protect its nascent film and music industries and in order for Cambodia to participate fully in world markets. For example, during the February 12 inaugural bilateral meeting under the Trade and Investment Framework Agreement (TIFA), which was signed in July 2006, Commerce Minister Cham Prasidh raised the difficulties Cambodia-produced Angkor Beer was having entering the U.S., as a Cambodia-American had frivolously registered the trademark in the U.S. More significantly, Prasidh talked of creating a link between trade and IPR. He said that Cambodia planned to require all firms that established businesses in

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Cambodia to observe IPR. Also in that meeting, the RGC requested additional technical assistance on a range of IPR issues, including comments on the draft law establishing a commercial court. The USG has provided training to RGC officials responsible for IPR enforcement, including a workshop in 2006 conducted by the U.S. Patent and Trademark Office (USPTO) for persons from all sectors involved in the IPR issue.

Recommendation

17. (SBU) Like many developing countries, Cambodia has come late to awareness of the need to protect IPR. Suffering through decades of turmoil that began in the early 1970's and which included the genocidal Khmer Rouge regime, Cambodians only established political and economic stability in 1998 when the last Khmer Rouge units laid down their arms. With this turbulent past, it is not surprising that IPR initially was not a high priority for the RGC. Nevertheless, there is now growing awareness within the RGC and increasing desire to increase its capabilities and to cooperate with the USG on this issue. Given Cambodia's chaotic past and expressed willingness to cooperate with the U.S., both bilaterally and in the ASEAN framework, post believes that Cambodia should be given additional time to fully establish its IPR regime. This clearly was the sense of the WTO when it extended the deadline for IPR enforcement compliance until 2013. In the meantime, we intend to work with the Cambodian government to raise public awareness of IPR, engage in capacity-building and provide technical assistance where possible.

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